

**Radiofone**  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

May 18, 1994

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Gen Doc. 90-314

Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
Room 814  
1919 M Street, N. W.  
Washington, DC 20036

Dear Chairman Hundt:

First, let me introduce myself. I am President and, together with my brother, Don Garvey, owner of Radiofone, a mobile communications service provider serving the New Orleans, Louisiana market. My brother and I began this company 35 years ago as an answering service operated out of our family home. When the Federal Communications Commission first began allocating frequencies for the then newly developing paging technology, we applied for channels and began a paging business.

After struggling during the early days of the industry, we developed the beginning of a viable business and moved to leased facilities where we began hiring our first employees. Since that time, my brother and I have devoted our business careers to the mobile communications business and our company has continued to expand. We are a "traditional radio common carrier" regulated by the FCC and the Louisiana Public Service Commission. However, we believe ourselves to be a "local Louisiana business." We have invested our lives into the development of this local company over the past 35 years.

As I am sure the records of the FCC will reflect, our company has been very active at the agency in order to ensure that we remained competitive with our principal competitor, South Central Bell Telephone Company. More recently, of course, we have remained competitive with "private carriers" who are now a full commercial competitor in the marketplace. As you know, Congress has now recognized the similarity and has declared that we both be called "commercial mobile radio service" (CMRS) providers and be regulated as common carriers.

When cellular technology was first developed and introduced as a new industry, Radiofone was one of the first applicants for cellular licenses to serve the New Orleans cellular geographic service area. Our application was filed before the Commission

decided to use a "lottery system" to select the licensee and, therefore, we went through a comparative hearing at enormous expense. We were selected as the licensee and, after receiving the license, we commenced immediately with the construction and development of what we like to believe is the finest cellular system in this part of the country. Indeed, while others have lagged in the development of additional cells, Radiofone now has approximately 70 cell sites active in our cellular geographic service areas.

At all times, our development of this company was done through great investment of time and energy and with funds borrowed from commercial sources. Since the very beginning, our company has consistently invested in every mobile communications technological development as it has been made available commercially.

Over the many years that we developed this company, we expanded from the initial two employees (my brother and I) to approximately 400 employees that we consider our "business family." My brother and I are the personal managers of this company and have been since the very beginning. We are proud of the service that we provide and we stand behind it.

I give you all of this historical prelude to express my personal concern about a proceeding currently under consideration by the Commission. We have invested our life savings and several millions of dollars of borrowed funds in the development of the cellular telephone company that we currently operate. Our business plan presented to our bank convinced them that we would be able to ultimately liquidate the indebtedness. Our business plan also convinced the bank that we are a progressive company and that we have consistently made the investment necessary to ensure that our service employs the most current state-of-the-art technology that has historically and consistently resulted in subscriber satisfaction with our service and to keep us competitive.

When the new technology identified as "Personal Communications Service" (PCS) was first introduced to the industry, we immediately began developing a plan for the addition of that service to our other mobile communication services offered to our subscribers. Our chief engineer was directed to make the studies necessary for us to add this technology to our company service offerings. Indeed, our affiliated company developed a PCS switch and applied for a pioneer's preference. We were shocked to learn that the Commission adopted eligibility standards which preclude us, as a cellular telephone company, from providing PCS in our business area. I believe this to be totally unnecessary, grossly unfair and harmful to the public. We have the existing ability to introduce and market this new innovative service.

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Since your appointment as Chairman of the Commission, I have carefully studied your philosophy. I was delighted to learn that you had a background in anti-trust law as I believed that under your leadership, the Commission would eliminate the competitive disadvantages that our company has suffered over the years in having to compete with a mobile communications company owned and operated by the operating company that also owns the local telephone company - the "bottleneck" for interconnection. As the Commission's records will reflect, I have been at the forefront of the battle over interconnection rights since the early 1970's. I had the privilege of serving as President of the National Association of Radio Telephone Systems (NARS), the Association currently known as Personal Communication Industry Association (PCIA). As President of the Association in the early 1970's, I was personally active before the Commission during the development of Docket 18262, the allocation proceeding that resulted in the allocation of the cellular frequencies while establishing eligibility for "non-wireline" cellular companies. Radiofone, as an existing radio common carrier, was one of the initial applicants for a cellular license.

I also assumed that through your anti-trust background, you too understand the true meaning of "genuine marketplace competition", something that we have strived for since the early days of our company. I was interested to read the statement that you delivered on behalf of the Commission to The House Subcommittee on Telecommunications and Finance Committee on Energy and Commerce relative to HR3636 (National Communications Competition and Information Infrastructure Act of 1993) and HR3626 (Anti-trust Reform Act of 1993) in January. In supporting HR3636, your comments indicate that you would support repeal of the bar prohibiting telcos from providing video programming to customers in their service areas by allowing telcos to compete with cable companies in providing one way and interactive video services. Your comments were reported by the FCC and state that your support was based upon the position that "competition in this market can be expected to produce the same positive results from consumers that we have seen in other markets for telecommunications services that have undergone the transformation from monopoly to competition: technological and service innovation, lower prices and responsiveness to consumer tastes. Telephone company entry also will expand the electronic marketplace of ideas by creating new outlets for video service providers." In supporting HR3626, you supported: "the objective of allowing the RBOC's, over time and subject to appropriate safeguards, to provide interexchange services. With their capital resources and technical expertise, the RBOC's will be formidable competitors for AT&T, MCI and Sprint. Consumers of long distance services would be the principal beneficiaries of increased competition in this market."

More recently, the FCC Releases reported your address to the National Press Club delivered on May 2, 1994. Before the Press Club you addressed the development of the information highway. Once again, you reiterated your personal philosophy - one which I support - that America is made great by vigorous competition rather than government regulation. Acknowledging that "we have only skimpy experience with full competition in communications markets", you went on to report your conversation with one of the former Soviet Republic Ministers where you, with justifiable pride, pointed out that "strength comes from our Nation's reliance on competition as the way to promote our economy and increase job growth." Your commendable address specifically identified competition as "finding a way, over time, to let long distance companies into the local telephone markets and local telephone companies into the long distance markets...". You defined the FCC's role as "to referee the game" and stated that you had "an unshakable commitment to let private sector competition lead us, and the rest of the world, through the information age."

More specifically to the interest of our company, you informed the audience that the Commission would auction the "so-called narrowband PCS, which is the opportunity to run advanced paging services" this summer; and to begin auctioning "broadband PCS", toward the end of the year. You identified this as "enough spectrum to permit a company to offer mobile telephone services provided by lightweight low cost pocket devices" well ahead of the Congressional deadline. You indicated that you wanted to "make sure that small business, women, minorities, and rural telephone companies have an opportunity to participate in this grand economic opportunity." You justifiably acknowledged that "No one wants big companies to take unfair advantage of small companies through prohibited exclusive dealing, illegal discriminatory pricing or other inappropriate trade tactics. Competition for the new entrants will be tough enough; the incumbents will have to play fair."

Mr Chairman, you concluded your address with a commitment to "vigorous competition in communications, guided by principles of choice, opportunity and fairness" - a promise that "the American dream will endure." We at Radiofone applaud your philosophy. However, the proposals presently pending before the Commission conclude that our small company will be ineligible to participate in this new technology. This seems to me to be a great paradox. We have resisted the temptation to sell out to larger companies. We have a commitment to our employees and a commitment to the community that we serve. We also have a commitment to our bank which has "hung with us" through tough times. It would be a tragedy for them to now "hang with us" because of some government regulation that prohibits us to effectively compete and pay off our

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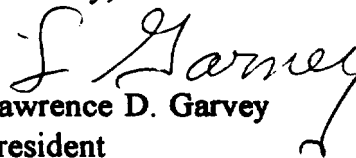
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indebtedness. We are among the pioneers who took the financial risk to develop cellular technical feasibility and public acceptance of the very radio service which now makes PCS possible. Would today's government preclude the Wright Brothers from marketing jet airplanes because they pioneered man flight? On some basis that eludes reason, we will be kept off the playing field and out of the game.

We have had our attorneys file pleadings and participate aggressively in the ongoing proceedings in General Docket 90-314. If the rule was modified to preclude eligibility of companies having \$100 million in annual revenues (similar to the "Tier I Local Exchange Company" standard), the Commission's expressed concerns would be appropriately safeguarded while allowing smaller existing cellular carriers to maintain economic viability and the ability to remain competitive. We are imploring the Commission to modify Section 99.204 of the PCS rules to ensure our eligibility to vigorously compete in this newly expanding mobile communications marketplace. I trust that you and your fellow commissioners will not let us down.

With kind regards, I am

Sincerely,

  
Lawrence D. Garvey  
President

cc: All Commissioners